



VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703)583-3800 FAX (703) 583-3821
www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

Thomas A. Faha
Regional Director

**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
County of Fairfax, VA
FOR
Interstate 66 – Solid Waste Management Facility
Solid Waste Permit No. 387**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and the County of Fairfax, regarding the Interstate 66 – Solid Waste Management Facility, for the purpose of resolving violations of the Virginia Waste Management Act and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "County of Fairfax" means Fairfax County, Virginia, a political subdivision of the Commonwealth of Virginia. County of Fairfax is a "person" within the meaning of Va. Code § 10.1-1300/§ 10.1-1400/§ 62.1-44.3.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" or "Landfill" means Interstate 66 – Solid Waste Management Facility, located at 4618 West Ox Road, in Fairfax County, Virginia, which is owned by the County of Fairfax, and is operated by the Fairfax County Department of Public Works & Environmental Services.
6. "FAR" means the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, 9 VAC 20-70-10 *et seq.*
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
8. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
10. "Permit" means Solid Waste Permit (SWP) No. 387, which was issued under the Virginia Waste Management Act and the Regulations to County of Fairfax on October 26, 1982.
11. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. On October 26, 1982, the County of Fairfax (Department of Public Works and Environmental Services) was granted a permit to operate a Solid Waste Transfer Station and landfill at the Facility by the Commissioner of the Virginia Department of Health, predecessor-in-interest to the Director of DEQ. The Permit allowed for the receipt of municipal solid waste, white goods, tires, debris waste, and inert waste at the Facility.
2. The Facility had operated as a sanitary landfill until March 30, 1983 when its active landfill was closed. The Permit was later amended in 1989 to allow for the operation of a Landfill Gas Migration Control System at the landfill portion of the Facility, and was further amended on January 20, 2009, when the Transfer Station portion of the Facility was removed from the SWP 387 Permit, and permitted instead under PBR 555.

Operations at the Facility are subject to the Virginia Waste Management Act, the Regulations, and the Permit.

3. On November 13, 2018, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act, the Regulations and the Permit. Based on the inspection and follow-up information, Department staff made the following observations:
 - a. The methane monitoring system in the Transfer Station building (permitted under SWP 387) indicated that methane was detectable at 40% of the lower explosive limit (LEL) in the Highbay and Northern Utility Room areas.
 - b. The audible alarm on the methane monitoring system had been turned off, and four of the seven buildings at the Facility had their methane monitoring systems disconnected from the electrical supply, rendering them inoperable. The Facility's staff was unable to document how these buildings were being monitored for methane gas.
 - c. No records exist to demonstrate that the County of Fairfax adequately provided DEQ with the required 24-hour verbal or five-day written notification of hazardous conditions or noncompliance. No records exist to demonstrate that the County of Fairfax took immediate actions to protect human health and safety, and a remediation plan was neither submitted to DEQ nor implemented at the Facility.
4. 9 VAC 20-81-200.A.1.a requires that during periods of operation, closure, and post-closure, the concentration of methane gas generated by the landfill shall not exceed 25% of the LEL.
5. 9 VAC 20-81-200.C.1 requires that the Facility operator take immediate steps necessary to protect public health and safety, and notify the department within 5 days, when methane gas is monitored to be in excess of 25% of the LEL.
6. 9 VAC 20-81-200.B.4 requires that gas monitoring be conducted, at a minimum, quarterly.
7. 9 VAC 20-81-200.C.2 requires that Facility operator implement a remediation plan for methane gas release, within 60 days of monitored concentrations exceeding 25% of the LEL, and submit it to the Department for modification of the landfill permit.
8. 9 VAC 20-81-530.C.3 requires that the permittee report to the Department any noncompliance or unusual condition that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances.
9. On November 27, 2018, based on the inspection and follow-up information, the Department issued Notice of Violation No. 2018-NRO-0004 to the County of Fairfax for the violations described in paragraphs C(1) through C(8), above.

10. On November 30, 2018, County of Fairfax submitted a written response to the NOV which acknowledged the alleged methane monitoring exceedance and failure on the part of the permittee's staff to follow proper procedures in the wake of elevated methane gas levels. County of Fairfax also acknowledged that several of the portable plug-in methane sensors were inoperable at the time of the inspection, and that additional training, accompanied by remote alarm notification, and permanent sensor fixtures, were being implemented as a result of the NOV.
11. On December 11, 2018, and again on June 3, 2019, Department staff met with representatives of County of Fairfax to discuss the violations, including the County of Fairfax's written response.
12. A second response from the County of Fairfax was received by the Department on June 17, 2019, which detailed that County evidence suggested that the concentration of methane at the transfer station was never at 40% of the LEL or higher, and that the alarm for such was the faulty result of a disconnected sensor at one location, and a painted-over sensor at another, triggering a 40% methane LEL reading on the alarm. Fairfax posited that hand-held methane detectors used at the transfer station on the same day as the inspection did not reveal methane gas, nor had it been detected in the seven months since.
13. Based on the results of the November 13, 2018, inspection; the December 11, 2018, and June 3, 2019, meetings; and the documentation submitted on November 30, 2018, and June 3, 2019; the Board concludes that the County of Fairfax has violated 9 VAC 20-81-200.A.1.a; 9 VAC 20-81-200-B.4; 9 VAC 20-81-200.C1; 9 VAC 20-81-200.C.2; and 9 VAC 20-81-530.C.3 as described in paragraphs C(1) through C(11), above.
14. DEQ staff inspected the Facility on February 25, 2019, and verified that the violations described in paragraphs C(3)(a) – C(3)(c) above, had been corrected.
15. In order for County of Fairfax to complete its return to compliance, DEQ staff and representatives of County of Fairfax have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Responsible Party, and Responsible Party agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$25,500** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

County of Fairfax shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, County of Fairfax shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of County of Fairfax for good cause shown by County of Fairfax, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, County of Fairfax admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. County of Fairfax consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. County of Fairfax declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by County of Fairfax to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the

Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. County of Fairfax shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. County of Fairfax shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. County of Fairfax shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and County of Fairfax. Nevertheless, County of Fairfax agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after County of Fairfax has completed all of the requirements of the Order;
 - b. County of Fairfax petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to County of Fairfax.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve County of Fairfax from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by County of Fairfax and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of County of Fairfax certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind County of Fairfax to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of County of Fairfax.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, County of Fairfax voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2019.

Thomas A. Faha, Regional Director
Department of Environmental Quality

----- (Remainder of Page Intentionally Blank) -----

County of Fairfax voluntarily agrees to the issuance of this Order.

Date: 7/8/19 By: [Signature], Chief Financial Officer
(Person) (Title)
County of Fairfax

Commonwealth of Virginia
City/County of Fairfax

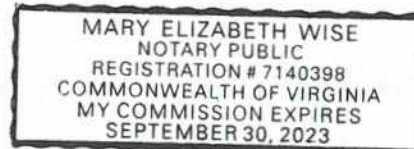
The foregoing document was signed and acknowledged before me this 8th day of
July, 2019, by Joseph M. Mondoro who is
Chief Financial Officer of County of Fairfax, on behalf of the County of Fairfax
Solid Waste Management Program.

[Signature]
Notary Public

7140398
Registration No.

My commission expires: 9-30-2023

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Decomposition Gases

County of Fairfax shall control decomposition gases from the Facility as required by 9 VAC 20-81-200.

- a. No later than 60 days after execution of this Order, County of Fairfax shall submit a revised Landfill Gas Management Plan, including a revised Monitoring Plan and Remediation Plan for SWP387.
- b. County of Fairfax shall respond to any notices of deficiency with respect to its Landfill Gas Management Plan and shall comply with its permit as issued.

2. Contact

Unless otherwise specified in this Order, County of Fairfax shall submit all requirements of Appendix A of this Order to:

**Virginia Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193**